

## Message Text

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C O N F I D E N T I A L STATE 031096

E.O. 11652: GDS

TAGS: EIND, BDIS, EINV, PFOR, PE

SUBJECT: MARCONA - PROBLEM WITH FREIGHT CONTRACT

1. US GROUP DISCUSSED QUESTION OF PAYMENT OF PORT CHARGES AND TAXES UNDER MARCONA-CPV CONTRACT WITH MARCONA OFFICIALS MORNING OF JANUARY 28; FISHLOW AND GANTZ ACCOMPANIED FURTH BRADFIELD AND EAST MET WITH CPV HEAD DE CASTILLO AND LAWYER LAZO AT CPV HEADQUARTERS LATER THAT MORNING IN ATTEMPT TO IRON OUT ISSUES.

2. DE CASTILLO INDICATED THAT PROBLEM HAD BEGUN WHEN MARCONA HAD REQUESTED INFORMATION ON PORT CHARGES. INFORMATION, COPIED OUT OF JUNE 30 EL PERUANO, WAS SENT TO MARCONA, REFLECTING THE CHARGES WHICH WENT INTO EFFECT ON JULY 1. MARCONA REPLIED BY CABLE INDICATING THAT COMPANY WOULD PAY CERTAIN OF THE CHARGES BUT NOT THOSE IT CHARACTERIZED AS TAXES. THIS HAD RAISED SERIOUS PROBLEMS, AS THESE CHARGES WERE REQUIRED BY LAW, AND IN CPV'S VIEW MARCONA WAS REQUIRED TO PAY THEM UNDER THE DECEMBER 11 CONFIDENTIAL

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TRACT. DE CASTILLO INDICATED FURTHER THAT MARCONA HAD BEEN

AWARE OF THE INCREASES IN PRICES AS IT HAD PAID THEM UNDER PROTEST FOR THE 11 SHIPS WHICH CALLED AT SAN JUAN BETWEEN JULY 1 AND JULY 25.

3. DISCUSSION CONFIRMED THAT THERE HAD BEEN A MISUNDERSTANDING OVER MEANING OF PARA 2)D) OF CONTRACT STATING AS FOLLOWS: QUOTE THE RATES SPECIFIED IN SUBPARAGRAPH C ARE INCLUSIVE, AND ARE NET OF ANY FEES, TAXES OR OTHER CHARGES IMPOSED BY THE GOVERNMENT OF PERU UNQUOTE. GOP HAD UNDERSTOOD THIS LANGUAGE TO REFER TO INCREASES IN FEES, TAXES, OR OTHER CHARGES ON FREIGHT WHICH MIGHT BE IMPOSED BY THE GOVERNMENT OF PERU (SUCH AS THE 3 FREIGHT TAX PRESENT IMPOSED BY CHILE); USG NEGOTIATORS HAD HAD THE SAME INTENTION. HOWEVER, MARCONA OFFICIALS ARGUED THIS COVERED NOT ONLY SUCH TAXES ON FREIGHT BUT ALL PORT CHARGES IMPOSED BY GOP OR AT THE LEAST NEW PORT CHARGES. IT APPEARED THAT MARCONA IN CALCULATING FREIGHT RATE SCHEDULE HAD INCLUDED NORMAL PORT CHARGES, INCLUDING LIGHT AND BUOY TAXES, BUT HAD USED THE LOWER RATES IN FORCE BEFORE JUNE 30.

4. MARCONA OFFICIALS INDICATED VERY STRONGLY THAT MATTER WAS ONE OF PRINCIPLE AND SUGGESTED THAT GOP WAS ACTING IN BAD FAITH. CPV OFFICIALS INDICATED THAT THERE HAD BEEN A MISUNDERSTANDING BUT SAW NO MEANS OF RESOLVING THE PROBLEM GIVEN CONFINES OF PERUVIAN LAW AND FACT THAT RATES HAD BEEN PUBLISHED WELL PRIOR TO DATE OF CONTRACT. THEY DID AFFIRM, HOWEVER, THEIR INTERPRETATION OF 2D AS BARRING ANY FUTURE INCREASES IN FEES, TAXES, OR OTHER CHARGES, INCLUDING PORT CHARGES.

5. MATTER WAS NOT RESOLVED FULLY AT MEETING OR IN SUBSEQUENT DISCUSSIONS WITH OTHER GOP OFFICIALS. MARCONA VESSEL CALLING AT SAN JUAN JANUARY 30 WAS UNDER INSTRUCTIONS FROM FURTH TO PAY THE CHARGES, BUT FURTH INDICATED LATER TO US GROUP THAT WHEN FINAL 5 OF SETTLEMENT TO BE PAID 60 DAYS LATER MARCONA MAY WITHHOLD THOSE OF THE CHARGES IT BELIEVED CONSTITUTED TAXES.

6. COMMENT: MEMBERS OF US GROUP WILL DISCUSS ISSUE  
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;TTH MARCONA OFFICIALS IN WASHINGTON DURING THE NEXT FEW DAYS IN ATTEMPT TO GET FULL FACTS AND WORK OUT SOME MEANS OF RESOLVING SITUATION. WE BELIEVE THERE HAS BEEN A MISUNDERSTANDING BETWEEN MARCONA AND US GROUP. THERE WAS NONE BETWEEN US GROUP AND CPV AT TIME OF CONTRACTING. WHILE WE UNDERSTAND FURTH'S SENSITIVITY TO INDICATIONS OF GOP BAD FAITH, WE WISH VERY MUCH TO AVOID JEOPARDIZING SATISFACTORY FINAL SETTLEMENT. THE EXTENT OF THE

DIFFERENCE IS ABOUT \$0.10/TON WHICH THE PERUVIANS ARE  
WILLING TO MAKE UP IN ANY SETTLEMENT. WE ALSO BELIEVE  
US GROUP WAS HAMPERED BY ITS LACK OF PRIOR KNOWLEDGE  
OF TELEGRAPHIC EXCHANGES BETWEEN MARCONA AND CPV AND

FACT THAT MARCONA, WHILE KNOWING OF HIGHER PORT CHARGES  
IN EFFECT JULY 1, USED LOWER CHARGES IN COMPUTING THE  
FREIGHT RATES ULTIMATELY EMBODIED IN THE CONTRACT. INGERSOLL

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